

Galway CPD

Family Law – the case for reform and a review of cohabitation legislation

Helen Coughlan

Partner

Patrick J Farrell and Company

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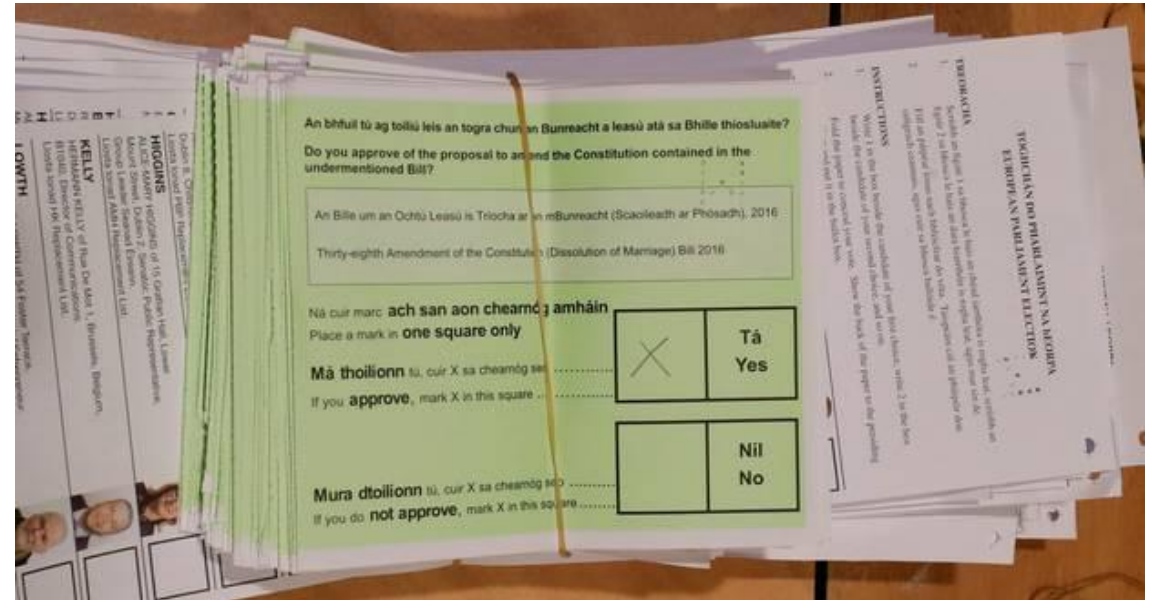
Family Law Committee of Law Society

- Share information with members
 - Inform public
- Engage with NGOs
 - Treoir
 - One Family
 - FLAC
- Children's Rights Alliance
 - Rape Crisis Centre



Family Law Committee of Law Society

- Submissions to Government
- Divorce Referendum
- Change and reform



Family Law – the case for reform

- System is broken
- Chronic Delays
- Unsuitable facilities



Family Law – the case for reform

- Delays
 - 4 months before application is listed
 - 60-80 cases listed for hearing
 - Adjourned – another four months
 - 28 May –in court 28 September
 - If adjourned – 28 January
 - 8 months without seeing child/financial support



Family Law – the case for reform

- Delays in Legal Aid Board
 - Blanchardstown – 44 weeks
 - Ennis – 21 weeks
 - Newbridge – 11 weeks
 - Wexford – 8 weeks
 - Wicklow – 17 weeks

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LEGAL AID BOARD

Family Law – the case for reform

- Reform is long overdue
- Current system is hurting the most vulnerable



The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

- Pre-legislation: no specific rights for cohabitants
 - Property
 - Maintenance
 - Inheritance

The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010

- Post-legislation: a redress scheme
- Covers death and separation
- Right to apply to court for:
 - Maintenance
 - Property adjustment order
 - Pension adjustment order
- Share in estate of deceased cohabitant

Who is a cohabitant?

- Two adults - same or opposite sex
- In an intimate and committed relationship – does not cease to be intimate if no longer sexual
- Not related to each other.
- Section 172 (2) – what a court will consider –
 - Duration of relationship
 - Degree of financial dependence
 - Dependent children

What constitutes living together

- MW v DC [2017] ICEA 255
- Court will look at all the circumstances
 - Doesn't have to be physically living together day by day.

Who is a qualifying cohabitant?

- Must be in a intimate and committed relationship for:
- 2 years where they are the parents of dependent children
- 5 years in any other case
- If one cohabitant still married? Must be living apart from spouse four out of previous five years to qualify as cohabitant.
- Difficult to establish duration of relationship – no formal date.
- Caselaw: dispute over whether time requirements satisfied
 - Court will look at all of the circumstances of the relationship

Time Limits

- Claim must be made within TWO YEARS of the end of the relationship.
 - Disputes as to when the relationship ended.
- On death – must be made within six months after the grant of representation is granted. Strict deadline – no provision to extend.

The Redress Scheme

- Must be financially dependent – unlike marriage.
- Section 173: Criteria Court must consider:
 - Financial circumstance, needs, obligations of each qualified cohabitant
 - Entitlement of any spouse or former spouse
 - Entitlement of any dependent child
 - Duration of relationship
 - Contributions each made in looking after home
 - Earning capacity
 - Physical or mental disability
 - Conduct

The Redress Scheme

- Must prove financial dependence when relationship breaks down
- No need to prove financial dependence on deceased

Entitlements when love breaks down

- Property Adjustment Order – similar to judicial separation and divorce
- But:
- Court will first see if a maintenance or pension adjustment order would be sufficient – Section 174

Entitlements when love breaks down

- Compensatory Maintenance Order
 - Periodic and lump sums
- Pension Adjustment Order
 - Similar to judicial separation and divorce
- Reliefs more limited than judicial separation and divorce
 - Rights of cohabitant less than those of spouse

Entitlements in Death

- Provision out of estate of deceased cohabitant
- Court will look at:
 - Factors set out in Section 173
 - Property/maintenance or pension adjustment order already made?
- Was there a devise or bequest in favour of the applicant?
 - The interests of the beneficiaries of the estate

Entitlements in Death

- Court cannot exceed share greater than spouse or civil partner
- Court cannot interfere with legal right share of spouse

Caselaw

- DC v DR [2015] IEHC 309
- Who is a cohabitant?
- No need to be financially dependent
- Conduct was taken into account.

Cohabitant's Agreements

- Like a pre-nuptial agreement
- Allows couples to regulate their financial affairs while in relationship
- Sets out what happens when relationship breaks down.

Valid Cohabitants' Agreement

- Independent legal advice or waive
 - Advice: get independent legal advice
- Agreement in writing
- Law of contract is complied with

- Family Law Committee Law Society
 - Precedent Cohabitants' Agreement

Any Questions?